

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

CrI.MC.No. 6454 of 2015 ()

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CC 88/2015 of J.M.F.C.,TALIPARAMBA
CRIME NO. 304/2007 OF TALIPARAMBA POLICE STATION, KANNUR
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PETITIONER(S)/ACCUSED:

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- 1. K.BINUKUMAR, AGED 36 YEARS
S/O.KUNHIRAMAN, BABUKKAT HOUSE, TALIPARAMBA AMSOM
KEEZHATOOR, KANNUR DT.**
 - 2. K.P.MAHESH, AGED 36 YEARS
S/O.NARAYANAN, BABUKKAT HOUSE, TALIPARAMBA AMSOM
KEEZHATOOR, KANNUR DT.**

BY ADV. SRI.P.NARAYANAN

RESPONDENT(S)/COMPLAINANT & DEFACTO COMPLAINANT:

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- 1. STATE OF KERALA
THROUGH STATION HOUSE OFFICER
TALIPARAMBAPOLICE STATION, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
 - 2. P.P.ABDUL KHADER, AGED 48 YEARS
S/O.UMMER, K.V.HOUSE, FAROOQ NAGAR, MANNA
TALIPARAMBA, KANNUR DT.670 501.**

**R1 BY PUBLIC PROSECUTOR SMT.SAREENA
R2 BY ADV. SRI.K.S.PRAVEEN**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

Crl.MC.No. 6454 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE-1:** CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.304/2007 OF TALIPARAMBA POLICE STATION.
- ANNEXURE-2:** CERTIFIED COPY OF THE JUDGEMENT IN CC 910/2007 OF JFCM, TALIPARAMBA
- ANNEXURE-3:** CERTIFIED COPY OF THE JUDGEMENT IN CC 63/2011 OF JFCM, TALIPARAMBA
- ANNEXURE-4:** CERTIFIED COPY OF DEPOSITION OF 2ND RESPONDENT WHO IS EXAMINED AS PW1 IN CC 63/2011
- ANNEXURE-5:** AFFIDAVIT DATED 26.9.2015 SWORN TO BY THE 2ND RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

P.D.RAJAN, J.

Crl.M.C.No.6454 of 2015

Dated this the 19th day of October, 2015

ORDER

This petition is filed under Section 482 of the Code of Criminal Procedure (hereinafter called 'the Code' for short), to quash Annexure A1 final report in Crime No.304/2007 of Taliparamba Police Station. Petitioners are the 5th and 11th accused in the above crime, which was registered for the offence punishable under Sections 143, 147, 148, 454, 380, 427 read with 149 of the Indian Penal Code.

2. The prosecution case is that on 08.05.2007 at 10 a.m., the accused, in furtherance of the common object, trespassed into the shop room of the defacto complainant and destroyed T.V., Fan, weighing machine and light board and caused a loss of Rs.1 lakh and committed theft of bakery items and thereby committed the offence. Taliparamba police registered the above case

and after completing investigation, lodged Annexure A1 charge. After investigation, final report was filed and now pending in the Judicial First Class Magistrate Court, Taliparamba as C.C.No.88/2015.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the Respondent.

4. The learned counsel for the petitioners contended that the co-accused were acquitted and the matter is settled between the defacto complainant and the accused. During pendency of the trial, the petitioners got employment in gulf country and they left India. Altogether, there are 13 accused in the final report. Accused 1 to 4, 6, 8 to 10, 12 and 13 were acquitted on 29.01.2011 as per the judgment in C.C.No.910/07. Accused No.2 was acquitted as per judgment in C.C.No.63/2011 dated 07.02.2015. The case against the petitioners are split up and refiled as C.C.No.88/2015.

5. Now the petitioners submitted that in the light of Annexure A5, an affidavit filed by the respondents,

there is no meaning in facing a trial and conducting the proceedings.

6. The learned Public Prosecutor also submitted that there is no meaning in proceeding with trial of accused 1 and 2 in C.C.No.88/2015 of the Judicial First Class Magistrate Court, Taliparamba.

7. According to Section 482 of the Code, the inherent power can be exercised to make such orders as may be necessary to give effect to any order of this Court or to prevent abuse of the process of any court or to secure the ends of justice. A perusal of Annexure A1 to A3, it is found that there is no meaning in facing the trial since, as per Annexure 3 defacto complainant submitted that the name of the accused was not mentioned in that case. In connected cases C.C.Nos.910/2007 and 63/2011, the other accused were acquitted by the trial court. Therefore no purpose will be served in prosecuting A5 and A11 in C.C.No.88/2015. Therefore, inherent power of this Court can be used to quash the proceeding in the light of the decisions in ***Madhu Limaye v. State of***

Maharashtra [1977 (4) SCC 551], ***Joshi v. State of Haryana*** [2003 (2) KLT 1062 (SC)], ***Manoj Sharma v. State*** [2008 (4) KLT 417 (SC)], ***Shiji v. Radhika*** [2011 (4) KLT 682 (SC)], ***Jayrajsinh Digvijaysingh Rana v. State of Gujarat and Another*** [2012 (2) KLD (SC)].

In view of the above decisions, this criminal miscellaneous case is allowed and the case against accused 1 and 2 in C.C.No.88/2015 is quashed, by invoking inherent power under Section 482 of the code.

Sd/-
P.D.RAJAN
JUDGE

VS